

DEPARTMENT OF DEFENSE DEFENSE LEGAL SERVICES AGENCY DEFENSE OFFICE OF HEARINGS AND APPEALS APPEAL BOARD POST OFFICE BOX 3656 ARLINGTON, VIRGINIA 22203 (703) 696-4759

Date: March 2, 2022

In the matter of:)
)
)
Applicant for Security Clearance))

ISCR Case No. 19-03026

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 15, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement and Substance Misuse) and Guideline E (Personal Conduct) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On December 14, 2021, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Moira Modzelewski denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guidelines H and E, the SOR alleged that Applicant used marijuana in the early 2000s and again from about 2012 to 2016, including while being granted a security clearance, and that he continued to use marijuana despite telling a Government investigator in 2010 that he did not intend to use illegal drugs in the future, in part, due to a concern about losing his security

clearance. In responding to the SOR, Applicant admitted the SOR allegations. The Judge found against Applicant on all of the allegations.

In his appeal brief, Applicant stated, "I do not claim that the presiding Judge made an error in my case." Appeal Brief at 1. Instead, he contends that he is trustworthy and requests "a reduction in the penalty." *Id* at 2. The record, however, does not support the application of any of the exceptions listed under Appendix C of the Directive.

The Appeal Board is tasked to address material issues raised by the parties to determine whether the Judge committed harmful error. Directive ¶E3.1.32. Because Applicant has not made such an allegation of error, the decision of the Judge denying him a security clearance is sustainable.

Order

The decision is **AFFIRMED**.

<u>Signed: James F. Duffy</u> James F. Duffy Administrative Judge Chairperson, Appeal Board

Signed: James E. Moody James E. Moody Administrative Judge Member, Appeal Board

<u>Signed: Jennifer I. Goldstein</u> Jennifer I. Goldstein Administrative Judge Member, Appeal Board